

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

THE UNITED STATES OF AMERICA,

plaintiff,

versus

3:23CR92

KUBIR KAUR and

HARMANPREET SINGH,

defendants,

Before: HONORABLE ROBERT E. PAYNE
Senior United States District Judge

Phone Conference

November 28, 2023

Richmond, Virginia

GILBERT F. HALASZ
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, VA 23219

APPEARANCES

Matthew Thiman, Esq.

DOJ-Crt

for the United States

Ali John Amirshahi

Gregory R. Sheldon, Esq.

for defendant Kaur

Atchuthan Sriskandarajah, Esq.

Matthew W. Greene, Esq.

for defendant Singh

1 THE COURT: Hello.

2 This is United States versus against Kaur and Singh,
3 criminal 3:23 CR 92.

4 Beginning with counsel for the government, who is
5 here?

6 MR. THIMAN: Good afternoon, Your Honor, Matthew
7 Thiman for the government.

8 MR. SHELDON: Good afternoon. This is Greg Sheldon
9 for defendant Kulbir Kaur.

10 MR.SRISKANDARAJH: Good afternoon, Your Honor. This
11 is Atchuthan Sriskandarajh for Harmanpreet Singh.

12 MR. GREENE: Good afternoon, Your Honor, this is
13 Matthew Greene for Mr. Singh.

14 THE COURT: All right.

15 There is an order that was entered on the 18th, ECF
16 number 118. It was entered yesterday.

17 And I have to confess to being quite confused. There
18 was pending at the time government's motion to admit
19 rebuttal evidence, ECF number 105, and to it was attached
20 the proposed motion and memorandum for which leave was
21 sought. That would have been 105-1 and 105-2.

22 The counsel for the government called chambers on
23 November 27 saying they sought clarification as to the
24 order number 113, wherein briefing was called for on ECF
25 number 105. At that time counsel were instructed to look

1 at ECF number 113, and paragraph four, which dealt with
2 the briefing.

3 But then nonetheless, on the 17th, even though the
4 matter was whether this motion was to be allowed to be
5 filed or not, I went back and looked at the transcript and
6 Mr. Amirshahi, I mean Mr. Kulbir Kaur, did not object, but
7 Singh did. So that is why we set up the briefing.

8 Why, Mr. Sriskandarajah, was 116 and 117, why were
9 they filed yesterday?

10 MR.SRISKANDARAJH: Yes, Your Honor, I can explain.
11 Our reason -- I would say initially, Your Honor, we have
12 no intention trying to flout The Court order in any way.
13 We ultimately decided, subject to filing in an effort to
14 comply with our understanding of The Court's orders and
15 depend on the conference call. This may have been our
16 mistake and our misunderstanding of the conference call,
17 Your Honor, and ultimately maybe counsel had a different
18 understanding, but I thought we had had a long discussion
19 on the conference call about the actual substance of the
20 government's motion to admit rebuttal evidence prior to
21 The Court setting that response schedule detailed in 113.
22 So we believe that it was clear, at least, Your Honor from
23 the conference call, that the filing schedule related to
24 the actual substantive motion rather than the motion for
25 leave, which would require us to file the motion prior to

1 the defense filing any responses to it today. Considering
2 that, we wanted to make sure we were also complying with
3 ECF 111, which ordered us just to comply basically with
4 all the agreements and understandings from the conference
5 call. We did read 113, of course, and reached out for
6 clarity to chambers whether we should logistically file
7 the actual motion, or whether that wasn't The Court's
8 preference based upon what we thought was our
9 understanding of the conference call. And they properly
10 said they couldn't clarify The Court's orders, but
11 considering the timing of the defendants' responses, which
12 were due today, we had tried our best to comply with what
13 we believed The Court's intentions are from the conference
14 call to make sure the motion was filed prior to the
15 defendants filing their responses to it today.

16 But, again, it may have been our misunderstanding
17 from the conference call, Your Honor.

18 THE COURT: Your first mistake -- first, you
19 shouldn't call in and ask for clarification of something
20 if you were doing it ex parte. That is the first thing.

21 Second thing, order trumps transcript. The order
22 tells you very clearly that we are dealing with only the
23 motion for leave to file, and you have already filed your
24 motion, whatever it was. It didn't seem to be much.
25 Defendants were given an order in 113 to file by today,

1 and that is what they were to address was the question of
2 the leave to file. You were given a motion for leave to
3 file -- you were given in the order an opportunity to file
4 a reply on that topic. That is all there was to it. I
5 don't know how you got yourself so confused. I think you
6 probably out-thought, tried to out think an owl, in the
7 words of one of my former colleagues.

8 I don't know what on earth you sought to accomplish
9 by doing it.

10 So it is done, and I am not going to pay any
11 attention to it. I will issue an order striking 116 and
12 117. And I now will be considering only the motion for
13 leave to file.

14 Now, it is entirely possible that the defendants
15 could use as a ground for not allowing the filing of the
16 supplemental motion in limine, or the extra motion in
17 limine. That it would be futile, and if that is the case,
18 then they are entitled to discuss the futility of the
19 proffered document. And then you can address it in the
20 reply brief if that occurs. But, I understand that now.
21 So all you have to do is address, defendants, whether
22 leave should be granted under the test that applies leave
23 to be granted.

24 Are you clear on that?

25 MR.SRISKANDARAJH: Yes, Your Honor. And I apologize.

1 Yes, Your Honor.

2 MR. GREENE: This is Matthew Greene --

3 THE COURT: Yes.

4 MR. GREENE: -- for Mr. Singh.

5 Just to confirm. We are going to file a response

6 today on the issue of should we ask this court to

7 consider, I believe it is ECF 105, motion to admit certain

8 rebuttal evidence?

9 THE COURT: That is correct.

10 MR. GREENE: Thank you.

11 THE COURT: That is all you can file.

12 Now, I want to clarify something.

13 We had a conference call -- what date was it on?

14 THE CLERK: November 21.

15 THE COURT: On November 21st. And we dealt with a

16 number of things.

17 Among them was a motion in limine, number one. The

18 motion having to do with electronic information. And the

19 government advised that the electronic information they

20 sought to admit, which they had in the record in the form

21 of an attachment to various motions, and in the form of a

22 notebook, were to prove the fact that the B.J. worked at

23 the Lovely Market Store. And the quantum of his work,

24 that is stated variously in the transcript or in the

25 record as scope, and whether he worked there, the scope of

1 his work, and the amount of his work.

2 I don't know how you can get that in any way, but
3 that is what we are talking about. Then I said, asked
4 you, well, really all you are talking about is whether he
5 worked at the store. And the defendant Kaur said they
6 weren't contesting that he worked at the store, neither
7 was defendant Singh. I suggested that perhaps you all
8 could work out a stipulation and talk about it. And asked
9 that you do that.

10 And I haven't heard back from you. Have you all
11 stipulated that he worked at the store and the amount of
12 hours that he worked? Or either one of those things?

13 Government, what is the answer?

14 MR. THIMAN: This is Matthew Thiman for the
15 government, Your Honor. We have not discussed any
16 potential stipulations yet. I will say --

17 THE COURT: Mr. Thiman, I told you to discuss the
18 stipulation on the 21st. Is that -- I mean that assumes
19 you are going to discuss it thereafter and before we have
20 a further hearing because the conference and the
21 stipulation related to a motion in limine that was going
22 to be considered on the fourth, the fourth of December.
23 So that is what you were told to do. You tell me now you
24 didn't do it. So, is it now the case that there is no
25 longer any dispute by either defendant as to whether B.J.

1 worked at the store?

2 Do you still agree?

3 MR. SHELDON: This is Greg Sheldon for Kulbir Kaur.

4 We do not dispute that he worked at the store.

5 THE COURT: All right.

6 MR. SHELDON: I understand Mr. Amirshahi stipulated
7 that previously.

8 THE COURT: Mr. Greene, for Mr. Singh?

9 MR. GREENE: Yes, sir. Matthew Greene for Mr. Singh.
10 We similarly do stipulate that he did work at the store.

11 THE COURT: All right.

12 In the discussion you mentioned that there was some
13 dispute about how long, that is, the number of hours or
14 days he worked at the store. And that these messages that
15 you were offering would be probative of that fact. Do you
16 now have a stipulation as to the length of time, either
17 number of days, and their numbers of hours of the days
18 that he worked at the store?

19 Government, yes or no?

20 MR. THIMAN: I don't believe that defense agreed to
21 the number of hours of days he worked at the store.

22 THE COURT: Are those in dispute from Mr. Kaur?

23 MR. SHELDON: Judge, I believe so, yes.

24 THE COURT: And for Mr. Singh? Mr. Greene?

25 MR. GREENE: Yes, sir, Your Honor.

1 Matthew Greene for Mr. Singh. I agree, like
2 Mr. Kaur, we believe that is in dispute.

3 THE COURT: Well, tell me this. Why is it in
4 dispute? Start with this one. Is there a time check-in
5 system in the store? Did he punch a time clock?

6 MR. THIMAN: This is Matthew Thiman for the
7 government, Your Honor. There is no time clock.

8 THE COURT: All right.

9 Is there anything -- do these messages that you are
10 talking about, how do they go to prove the amount of time
11 he worked in the store? Do they do it by day or by month
12 or by week, or what?

13 MR. THIMAN: Matthew Thiman again, Your Honor.

14 The messages if you look through the messages each
15 individual day you can see messages between defendants
16 Singh and defendant Kaur. You can also see it happens all
17 hours of the day, too, Your Honor. So often times there
18 is a series of messages. We highlighted, I believe you
19 have that, show messages directing him about work in the
20 store and certain orders to work in the store. Even late
21 into the night. Those are eminently relevant as to the
22 scope of his work, how early and how late he worked. And
23 frequency in terms of each individual day. I also say,
24 too, Your Honor these messages are direct evidence of
25 their knowledge of him working at the store, because there

1 is direct orders at all times of day and night.

2 THE COURT: If they stipulate that he worked at the
3 store there isn't any issue that they had knowledge that
4 he worked at the store, for Pete's sake.

5 What are you talking about?

6 MR. THIMAN: As long as the stipulation would
7 encompass their knowledge of that, then, Your Honor --

8 THE COURT: Well then, how could they possibly
9 coherently, rationally, reasonably stipulate that he
10 worked in the store without knowing that he worked in the
11 store?

12 Do you dispute that, Mr. Sheldon, that your client
13 knew he worked in the store?

14 MR. SHELDON: No, sir, Your Honor, I do not.

15 THE COURT: Mr. Greene, does Mr. Singh dispute that
16 he worked in the store?

17 MR. GREENE: No, sir, we do not.

18 THE COURT: All right.

19 MR. THIMAN: If I may --

20 THE COURT: Who is that?

21 MR. THIMAN: Matthew Thiman, Your Honor.

22 THE COURT: Well, unless the messages that you
23 attached that I was to read, and I have outlined them for
24 you in a previous conversation, which I read, the only
25 thing probative of the time that he worked is the time of

1 the messages, is that correct, of all of them, or do they,
2 do they contain somewhere among the ones that I didn't,
3 you didn't send me, something that says, well, my usual
4 working hours are 10:00 to 10:00 or 10:00 to 7:00? And
5 they say, no, your working hours are 9:00 to 5:00 or
6 something like that? Which one of them is it?

7 MR. THIMAN: By and large, Your Honor, I think we
8 included representative examples. There isn't anything
9 specifically that details hours, but you can see in all
10 the messages that are work related at all hours of the
11 day, included in the messages even that we didn't
12 represent in the attachment to the supplemental
13 memorandum -- I believe the stipulation as to the fact he
14 worked there is not sufficient for us to prove, as we have
15 to, they provided certainly services throughout the
16 charged time period, which is something that we will have
17 to prove at trial. A broad general stipulation won't be
18 sufficient for us to prove that element of the crime.

19 THE COURT: They stipulate that he worked out --
20 worked there for the duration alleged in the complaint, I
21 believe, didn't you all? Didn't you say that,
22 Mr. Sheldon?

23 MR. SHELTON: Yes, I don't believe that we dispute
24 that he was there working throughout the time period
25 alleged. It it is the other aspect of the allegation.

1 THE COURT: The number of hours in the day, right?

2 MR. SHELDON: Yes, sir, Your Honor.

3 THE COURT: Is that correct?

4 Same thing for you, Mr. Greene?

5 MR. GREENE: Yes, Your Honor, I agree that is
6 correct.

7 THE COURT: Well then, don't those messages to the
8 extent they are probative by themselves then in order to
9 get them in -- assuming you can pass the authenticity bar,
10 which you say you can -- you would have to deal with every
11 one of those messages. And that is precisely what the
12 probative value of the fact that messages occurred at
13 different times on different days seems to me to be highly
14 outweighed by the confusion and delay that it would
15 engender. 403 would eliminate the probative, and would
16 say that the probative value and relevance in that
17 situation is so marginal its prejudicial consequence
18 outweighs the benefit. So it would fall.

19 If you are doing this for the purpose that you are
20 saying, I am sure that you are familiar with the Federal
21 Rule of Evidence 1006. You can have somebody on the
22 government's dime go do the calculation that you want and
23 prepare a summary chart, and perhaps get it in that way.
24 But you can't, you can't burden the trial, I don't think,
25 with all of that material.

1 Now, you have got a lot of material you haven't
2 attached to the papers that you filed. But I want you to
3 go study that and see what you can do. Right now I don't
4 need any briefing, further briefing, on the motion in
5 limine, number one, which is part of ECF 42, I believe it
6 is. That motion is granted. It will be -- I mean is
7 denied without prejudice to raising a way to get it in
8 under Federal Rule of 1006.

9 All right.

10 I think that takes care of the motion in limine
11 number one, which is part of the government's multiple
12 motions.

13 Then I have got briefing coming in on the motion for
14 leave, and I will let you know if I need a hearing on
15 that.

16 Did we put a hearing date in the order? I don't
17 think we did.

18 THE CLERK: You put in a response.

19 THE COURT: So I will let you know if I need a
20 hearing after the responses and replies are filed.

21 So, is there anything else that you all have?

22 MR. THIMAN: Not at this time from the government,
23 Your Honor.

24 MR. GREENE: Not on behalf of Mr. Kaur. Thank you.

25 THE COURT: Now we have --

1 MR. GREENE: Nothing on behalf of Mr. Singh, Your
2 Honor.

3 THE COURT: Now, we have a hearing on ECF 43 and some
4 motions in limine on December 4. Have you resolved any of
5 those issues among yourselves so that I don't have to
6 spend time preparing for them? If you will tell me what
7 they are I can go forward and look and consider the ones
8 that are going to be actually in dispute.

9 MR. THIMAN: Matthew Thiman for the government, Your
10 Honor. I believe all of the outstanding issues are still
11 are outstanding.

12 THE COURT: All right.

13 The motion to suppress 43 that is written down in the
14 book. Why is it in my book if it is decided?

15 Are you all in agreement that motion to suppress, ECF
16 43, has been decided?

17 MR. SHELTON: Judge, this is Greg Sheldon for Mr.
18 Kaur. My understanding is that you entered an order
19 granting that motion.

20 THE COURT: All right.

21 MR. SHELTON: I can't remember the number. I believe
22 you granted that motion.

23 MR. THIMAN: Matthew Thiman for the government. I
24 believe decided in ECF 114.

25 THE COURT: All right. Just a minute. What is this,

1 23 or 22?

2 All right. Before we go, I want to make sure we are
3 straight on this.

4 What docket number did you say it was, sir?

5 MR. SHELDON: It was ECF 114.

6 THE COURT: 114, yes. Right.

7 So we will basically have the motion in limine left
8 to be dealt with; is that right? The motion to exclude
9 Singh's witness. Yes. All right. Okay. I will see you
10 all on the fourth of December. If I need to hear argument
11 I will let you know, and probably argue it on that date.
12 As to the additional motions, I have to wait until I see
13 the papers that are going to be filed today and the reply.

14 So what is the reply date?

15 THE CLERK: You have the order.

16 THE COURT: All right.

17 For those of you who are planning to work until
18 midnight, get them filed by close of business.

19 Any reason you can't do that for the defendant?

20 MR. THIMAN:

21 MR. SHELDON: Not a problem, Your Honor. I will do
22 my best, sir.

23 THE COURT: Well, let's make it by 8:00 o'clock
24 tonight.

25 MR. SHELDON: Yes, sir.

1 THE COURT: All right.

2 Thank you all very much.

3 MR. THIMAN: Thank you, Judge.

4 HEARING ADJOURNED.

5 THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT.

6

7 GILBERT FRANK HALASZ

8 Official Court Reporter

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